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May 14, 2007

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Via U.S. Mail:
Mr. Brad Mehaffy, NEPA Compliance Officer
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, DC 20005

Re: *DEIS Comments, Graton Rancheria Casino and Hotel Project*

Dear Mr. Mehaffy:

Thank you for allowing the Concerned Citizens of Rohnert Park the opportunity to review and comment on the Draft Environmental Impact Statement ("DEIS") for the Graton Rancheria Casino and Hotel Project. The following are comments from the Concerned Citizens of Rohnert Park regarding items that should have been addressed in the DEIS and should be addressed and clarified in the Final EIR:

- The DEIS is deficient due to the lack of discussion on the issue of land status and the legal entitlement to offer gaming by the Federated Indians of Graton Rancheria, a.k.a. Graton Rancheria Tribe. The DEIS should be revised to include an Indian Land Opinion from the National Indian Gaming Commission ("NIGC") pursuant to 25 U.S.C. § 2703 and 25 U.S.C. § 2719 or a full analysis of the restored lands issue.

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- The DEIS is deficient due to its lack of discussion regarding the prohibition of gaming on lands acquired after October 17, 1988. (25 U.S.C. § 2719(a)). Pursuant to the Graton Rancheria Restoration Act of 2000 (25 U.S.C. § 1300n-3(b)) real property taken into trust for the benefit of the Graton Rancheria Tribe shall not be exempt under Section 20(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)). 25 U.S.C. Section 2719(b) excepts gaming on Indian lands acquired after 1988, in the following circumstances:
 - (i) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination (25 U.S.C. Section 2719(b)(1)(A)); or
 - (ii) the lands are taken into trust as part of a settlement of a land claim (25 U.S.C. Section 2719(b)(1)(B)(i)), or, the lands are taken into trust as part of the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process (25 U.S.C. Section 2719(b)(1)(B)(i)); or
 - (iii) the lands are taken into trust as part of the restoration of lands for an Indian tribe that is restored to Federal recognition (25 U.S.C. Section 2719(b)(1)(B)(iii)). The Graton Rancheria Tribe is unable to satisfy or has failed to date to satisfy any of these exceptions and is therefore prohibited from gaming on any land acquired after 1988. The DEIS should be revised to include consideration of this prohibition on gaming.
- 1.1 The Introduction Section states that the Graton Rancheria Restoration Act of 2000 allows the Tribe to establish a reservation in Marin and Sonoma Counties. This restoration of the Tribe is not the same as restoration of *lands* which is required before the Tribe may operate a gaming facility on the acquired land. (25 U.S.C. § 2719). The DEIS should be revised to make this distinction and explain that the project is not on land which has been restored to the Graton Rancheria Tribe. Further, the DEIS should be

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revised to reflect and analyze the fact that the proposed project has no significant connection to the Graton Rancheria Tribe. The site of the proposed project was chosen based upon the proximity of the land to a major highway and a city. The unstated goal is to establish a casino in a well-developed, urbanized area. This area has been under state jurisdiction since September 9, 1850, when the California Legislature established 27 counties, including Marin and Sonoma, 64 years before Congress appropriated money for the purchase of lands for the benefit of Indians of nonspecific tribal affiliation at the Graton Rancheria.

- 1.2 This Section incorrectly asserts that the consequence of approving the management contract "would be the transfer of the land into trust by the BIA . . . and the development of one of the five casino-hotel resort development alternatives." This assertion is incorrect because before a gaming facility can be allowed, the NIGC must determine whether the lands are considered restored under 25 U.S.C § 2719(b)(1)(B)(3) with an "Indian Land Opinion." The NIGC has yet to issue an Indian Land Opinion and will not be able to support the determination that the lands are restored. The DEIS should be revised so that this Section accurately describes the process and notes that the ability to conduct gaming on the land remains an outstanding issue.
- 1.3 The "Wilfred Site" Section notes that the site is comprised of 11 separate parcels owned in fee by an entity called SC Sonoma Management. The "Lakeville Site" Section notes that the site is comprised of 5 parcels owned in fee by an entity called SC Sonoma Management. This non-Tribe entity ownership violates 25 U.S.C. §2710(b)(2)(A), which requires that the Tribe have "the sole proprietary interest and responsibility for the conduct of gaming activity." The DEIS should be revised to evaluate this apparent statutory violation.
- 1.4 The "Purpose and Need" Section states that the approval of the gaming facility would "effectuate the directive embodied in the Graton Rancheria Restoration Act of 2000." This is incorrect because the Graton Rancheria Restoration Act of 2000 (25 U.S.C. § 1300n-3(b)) specifically limits the real property eligible for trust status to "Indian owned fee land held by persons listed as distributees or dependent members in the distribution plan." The land is currently held by an entity called SC Sonoma

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Development LLC, a subsidiary of Station Casinos of Las Vegas, Nevada and therefore the land is not eligible to be taken into trust. The DEIS should be revised to acknowledge that the approval of the management contract will not require the Secretary to take the land into trust.

- 1.4 The "Purpose and Need" Section states that the approval of the gaming facility would "effectuate the directive embodied in the Graton Rancheria Restoration Act of 2000." This Section fails to address the May 1, 2006 letter from the Office of the Governor of the State of California, which opines that the Restoration Act, at 25 U.S.C. § 1300n-3(a)-(b), is not eligible for trust acquisition. The DEIS should be revised to take into account the effect of the Governor's letter.
- 1.4 The "Purpose and Need" Section states that the gaming facility would be compliant with the "authorization embodied in the Indian Gaming Regulatory Act (IGRA)." This is incorrect because under IGRA, gaming facilities proposed on non-restored land are prohibited unless the land has been federally recognized as restored land through an NIGC Indian Land Opinion. This land cannot be considered "restored" for the following reasons:
 - (a) The historical documents and factual circumstances surrounding the Graton Rancheria Tribe demonstrate that in 1915 the land comprising the former Graton Rancheria was purchased for the use of "Indians of California," not the Graton Rancheria Tribe nor the Federated Coastal Miwoks. Records from the Reno Indian Agency indicate approximately 453 Indians resided in Sonoma County in 1923. Neither the Graton Rancheria Tribe nor the Federated Coastal Miwoks were among the Indians listed in the records of 1923 as being present in this area of Sonoma County at that time. In 1933, a report was made on the land purchased in 1915. This 1933 report failed to identify any Indians remaining on the land. Therefore, the land of the proposed project can only be *acquired* by the Graton Rancheria Tribe; the lack of historical facts and documents cannot and do not support the conclusion that the land should be designated as *restored* to either the Graton Rancheria Tribe or the Federated Coastal Miwoks.

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(b) In 1959, a distribution plan identified distributees and dependent members of the Graton Rancheria. This distribution clearly identified and assigned restored land located in Graton, California to the members and descendants of the Graton Rancheria Tribe. Therefore, the lands of the Graton Rancheria Tribe have already been restored in Graton, California.

(c) The plain meaning of "restored" is to take back or be put in a former position. Here, the Graton Rancheria Tribe has never before been in possession of the lands subject to this NEPA review. In fact, the Graton Rancheria Tribe never has been in possession of any lands surrounding or near the lands subject to this NEPA review. The Federated Indians of the Graton Rancheria have their historical, archeological, geographical and cultural roots at the Graton Rancheria, located in Graton near Highway 116, South of Forestville and North of Sebastopol, 17 miles away from the proposed site.

(d) In order to be considered restored Indian land, there must be some indication that the land has in some respect been recognized as having a significant relation or connection to the Tribe. (*Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan* 46 F.Supp.2d 689, 701 (W.D. Mich. 1999)). This is the third proposed location of the facility and it is clear that the reason for selecting this location is its proximity to the highway and casino patron accessibility, rather than significant relation to the Tribe. The land does not have any relation to the Graton Rancheria Tribe and, therefore, cannot be considered restored Indian lands.

The DEIS should be revised to include either a NIGC Indian Land Opinion or provide a full analysis of whether the proposed project is on "restored lands."

- 1.21 This Section states that the DEIS has incorporated the issues and concerns summarized within the scoping reports. This is inaccurate because Section 3.2.6 of the Scoping Plan identified the issue of legal entitlement to, and restoration of, lands of the Graton Rancheria Tribe. The DEIS should be revised to include a discussion and analysis of whether the proposed project constitutes "restored lands" of the Graton Rancheria Tribe.

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- 2.92 This Section refers to the "aboriginal territory" of the Graton Rancheria Tribe. The term "aboriginal territory" is not defined, nor is it consistent with the Cultural Resources Reports included in Appendix M. Appendix M indicates the failure of both the Native American Heritage Commission and a private native lands research consultant to identify the presence of Native American Cultural resources in the immediate project area. The DEIS should be revised to include definition of "aboriginal territory" and support for the term when it is used.
- 3.6-4 This Section states that sites are in a region that "was traditionally controlled by the Coast Miwok, through Rohnert Park." This is an unsubstantiated claim, made without supporting evidence. The Concerned Citizens of Rohnert Park is in the process of conducting further investigation and fact-finding on the historical, geographical, cultural and other issues pertinent to the Federated Indians of the Graton Rancheria and wishes to reserve its rights to submit supplemental comments based on the results of this investigation. The DEIS should be revised to remove or substantiate this information.
- 3.6-4 The Section on the General Setting describes of the history of Indian presence in the general setting for the proposed site. This Section fails to document the historical presence of the Graton Rancheria Tribe. The DEIS should be revised to include historical documentation of the Graton Rancheria Tribe.
- 3.6-9 The Section on Native American Consultation notes that neither the Native American Heritage Commission nor the consulting firm of Tom Origer & Associates found the presence of Native American cultural resources or evidence of the aforementioned assertions of undefined "aboriginal territory" in the proposed project area. Further, this Section does not support the designation of the proposed project as "restored lands" and therefore gaming facilities cannot be permitted on proposed site. The DEIS should be revised to recognize the lack of history and cultural connection between the Graton Rancheria Tribe and the proposed project lands.

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- The DEIS is deficient as it does not address the May, 2005 Proclamation by Governor Schwarzenegger, which sets forth a general policy on tribal gaming. The DEIS should be revised to include a summary and analysis of how the proposed project can be compliant with this Proclamation.
- The DEIS is deficient for its lack of discussion of an alternative option for locating the proposed gaming facility on the original restored lands of the Graton Rancheria Tribe, in Graton, California. The DEIS should be amended to include this as a project alternative.
- The DEIS is deficient because it fails to discuss the impacts of the proposed project failing to obtain federal recognition for restored lands. The DEIS should be revised to include an analysis of the impacts and alternatives for the proposed project if the lands are determined not to be restored.

Very truly yours,

THE DIEPENBROCK LAW FIRM
A Professional Corporation

By: 

Michael E. Vinding, Esq.

MEV/vk

cc: Concerned Citizens of Rohnert Park